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MORGAN LEWIS & BOCKIUS LLP
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OFFICE OF PETITIONS

In re Application of :
Jonathan H. Bari, Scott R. Elkins, :
Joshua Hartmann : DECISION GRANTING PETITION
Application No. 09/759,225 : UNDER § 1.183
Filed: January 16, 2001 :
Attorney Docket No. 051726-0002 :

This is a response to the petition under 37 CFR 1.183, filed November 19, 2004, requesting waiver of 37 CFR 1.131 to the extent that it requires all of the named inventors execute the declaration filed thereunder.

The petition is **GRANTED**.

Petitioners assert that while both of the named inventors contributed to the conception of the claimed invention which is under rejection, only Jonathan Bari participated at the reduction to practice, and, as such, Scott Elkins and Joshua Hartmann seek relief from having to jointly execute the aforementioned declaration, which is asserted to demonstrate reduction to practice of the claimed invention.

As noted in MPEP 715.04, an adequate showing may lead to acceptance of a declaration under 37 CFR 1.131 executed by less than all the named inventors of the claimed subject matter in question. Under the facts presented, it is agreed that justice requires waiver of the rules to the extent they require Elkins and Hartmann to declare. However, the favorable decision herein does not relieve applicants from their burden to establish that the invention was completed before the date of the reference and that the claimed invention was the product of the joint inventors. See In re Carlson, 79 F.2d. 900, 27 USPQ 400 (CCPA 1935).

This application is being returned to Group Art Unit 2131.

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo
Petitions Attorney
Office of Petitions